

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ALEX N. AMANI,

Plaintiff,

v.

20-CV-235-LJV-HKS  
DECISION & ORDER

PHILIP J. MONTANTE, *et al.*,

Defendants.

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On February 24, 2020, the plaintiff, Alex N. Amani, commenced this action under 42 U.S.C. § 1983, alleging violations of his Fourth Amendment rights. Docket Item 1. On June 9, 2020, this Court referred this case to United States Magistrate Judge H. Kenneth Schroeder, Jr., for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 10.

In early 2021, Amani's attorney moved to withdraw, and on April 15, 2021, Judge Schroeder granted the motion. Docket Items 34, 35. Judge Schroeder's order explicitly directed Amani either to retain new counsel or to advise the Court that he instead would proceed *pro se* and gave him until May 28, 2021, to do so. Docket Item 35 at 2. Judge Schroeder warned that Amani's failure to respond to the order "may result in dismissal of this action for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure." *Id.* at 3. Amani did not respond to that order.

On September 13, 2021, defendant Kevin Jobity moved to compel responses to discovery demands. Docket Item 41. The next day, Judge Schroeder ordered Amani to respond to the motion to compel by October 15, 2021, or "otherwise show cause why

this case should not be dismissed, in its entirety, for failure to prosecute.” Docket Item 42 at 2. Judge Schroeder specifically warned Amani that his “failure to comply with this Order will result in the dismissal of this action” under Rule 41(b). *Id.*

After Amani again failed to respond, Judge Schroeder issued a Report, Recommendation and Order (“RR&O”) on October 29, 2021, finding that this case should be dismissed under Rule 41(b) for failure to prosecute. Docket Item 44. The parties did not object to the RR&O, and the time to do so now has long expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Schroeder’s RR&O as well as the submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Schroeder’s recommendation to dismiss this case.

For the reasons stated above and in the RR&O, the case is dismissed. The Clerk of the Court shall close the case.

SO ORDERED.

Dated: March 29, 2022  
Buffalo, New York

*/s/ Lawrence J. Vilardo*  
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LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE